

Florida Association



of Counties Trust

May 27, 2003

Mr. Herbert W. A. Thiele, Esq.
Leon County Attorney's Office
Leon County Courthouse
301 South Monroe St., Suite 202
Tallahassee, FL 32301

**COVERAGE DECLINATION LETTER
SENT VIA FACSIMILE AND
U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Re: Member: Leon County
Date of Loss: May 31, 2001 (arbitrarily chosen)
Claim No.: FAC2202ML-70-1
Claimant: Rudy Maloy

Dear Mr. Thiele:

Please accept my apology for the rather lengthy delay in responding to you regarding the request by Mr. Maloy's attorney, Stephen S. Dobson III, Esq. for the reimbursement of "reasonable" attorney's fees and costs in the amount of \$338,836.98.

This request for reimbursement stems from the suspension by Governor Jeb Bush of Mr. Maloy from the position of Chairman of the Leon County Commissioners on May 31, 2001. At this time Mr. Maloy was charged in Leon County Circuit Court with three felonies and five misdemeanors. Mr. Dobson was able to get all charges dismissed. The State's Attorney appealed Judge Bateman's ruling to the First District Court of Appeals. On September 3, 2002 the First District Court of Appeals affirmed Judge Bateman's Order. This Court of Appeals did not grant a rehearing or certify this case to the Florida Supreme Court.

Our declination of coverage is based on the following coverage analysis.

First, please refer to pages 11 and 12 of 18 of the Public Agency Multi-Class Liability portion of your Common Coverage Agreement form that states the following:

SECTION II - WHO IS AN INSURED

1. Public Agencies

If you are designated in the Common Coverage Agreement Form as:

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- a. A Public Agency, you are an insured.
- b. A Public Agency consortium, partnership, or joint venture, you are an insured. Your members or partners are also insureds, but only with respect to the conduct of your consortium, partnership, or joint venture operations.

2. Employees, Officials, Officers, Board Members, "Volunteer Workers," Real Estate Managers, and Representatives

- a. Each of the following is also an insured:
 - (1) (a) Your employees; and
 - (b) Your elected or appointed officials, officers, and governing board members, but only with respect to and when acting within the scope of their duties as your employees or officials; and
 - (2) Your "volunteer workers," but only when acting at your direction and within the scope of their duties as "volunteer workers";
- b. However, no official, officer, governing board member, employee, or "volunteer worker" is an insured for:
 - (1) "Bodily injury," "property damage," "personal injury," "advertising injury," "errors or omissions," or "violation of human or civil rights" to or against you or a co-official, co-officer, co-governing board member, co-employee, or co-volunteer while in the course of his or her employment, or the spouse, child, parent, brother, or sister of that co-official, co-officer, co-governing board member, co-employee, or co-volunteer as a consequence of such "bodily injury," "property damage," "personal injury," "advertising injury," "errors or omissions," or "violation of human or civil rights" or for any obligation to share "damages" with or repay someone else who must pay "damages" because of "bodily injury," "property damage," "personal injury," "advertising injury," "errors or omissions," or "violation of human or civil rights"; or
 - (2) "Property damage" to property owned or occupied by or rented or loaned to:
 - (a) That official, officer, governing board member, employee, or "volunteer worker"; or
 - (b) Any of your other officials, officers, governing board members, employees, or "volunteer workers"; or

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- (c) Any of your partners or members (if you are a consortium, partnership, or joint venture).
- c. Any person (other than your official, officer, governing board member, employee, or "volunteer worker") or any organization while acting as your real estate manager.
- d. Any person or organization acting as the legal representative of any insured who dies. That representative will have all the insured's rights and duties under this Coverage Part.

Based upon this definition of an insured we feel that Mr. Maloy would not meet the criteria outlined above with relation to this event.

Secondly, please refer to pages 31, 33 and 34 of 36 of your Common Coverage Agreement Form that state the following.

SECTION IV – COMMON COVERAGE AGREEMENT EXCLUSIONS

The following Exclusions apply to each Coverage Part. The provisions of a specific Coverage Part or endorsement thereto may, only by specific and express reference to these General Exclusions by their title, amend, modify, limit, or remove such General Exclusion as to a specific Coverage Part or portion thereof.

GENERAL EXCLUSION 2. EXCLUSION OF COVERAGE OF CERTAIN "ACTIONS," RELIEF, OR CIRCUMSTANCES.

- a. This Coverage Part does not apply to:

(6) Criminal Acts, Penalties

Criminal prosecution of a criminal act, civil "actions" alleging or arising out of commission of a criminal act, or civil or criminal penalties.

We do not pay for alleged criminal acts.

Lastly, please refer to pages 10 and 11 of 18 of your Public Agency Multi-Class Liability portion of your Common Coverage Agreement Form that states the following:

E. SUPPLEMENTARY PAYMENTS

- 1. We will pay, with respect to any "occurrence" reported or "claim" against an insured we investigate or settle; any "suit" against an insured we

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defend; or any mediation, "suit," "arbitration," or other "action" against, by, or with the insured in which we participate.

- c. All costs taxed against the insured in the "suit" against the insured we defend. With the specific exception of costs outlined in 1.f. below, such costs shall not include plaintiff's attorneys fees awarded under any state or federal statute, rule, or regulation.

Florida Association of Counties Trust (FACT) shall not pay for attorney's fees.

Based upon the preceding three paragraphs, we feel that coverage would not be afforded to Leon County in this matter.

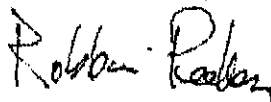
Enclosed please find a copy of the Procedure for Notification and Review of Coverage Denials for your reference in the event you may wish to request a review of our coverage position outlined above.

Although we will be unable to provide coverage for Leon County in this matter, we look forward to working with you in the future.

Sincerely,

FLORIDA ASSOCIATION OF COUNTIES TRUST

By: FACT Risk Services Corporation
(an independently owned and operated company)
Its Service Company



By: Robbin Peeken
Claims Examiner

RP/cf